



Position

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on the

Reflection document on the problem definition and options for review of the EU legislation on the marketing of Seed and propagating material (S&PM)

ESA is the voice of the European seed industry, representing those active in research, breeding, production and marketing of seeds of agricultural and ornamental plant species. It represents 37 national seed associations (and with that more than 1000 seed businesses in the EU, most of them SMEs) and 55 direct company members.

ESA's mission is to work for fair and proportionate regulation of the European seed industry, freedom of choice for customers in supplying seeds as a result of innovative, diverse technologies and production methods and for effective protection of intellectual property rights relating to plants and seed.

Contact:

ESA

European Seed Association

Tel. 0032-2-7432860

secretariat@euroseeds.org

www.euroseeds.org

I. Problem definition

The evaluation report as presented at the EU Seed Conference in March 2009 flagged numerous areas where improvements of the current situation were considered achievable before the background of the general satisfaction and appreciation of all stakeholders with the principles and tools of the existing legal framework. The Reflection Document does not fully reflect this important aspect of the appreciation and usefulness of the current principles and tools as it concentrates on quite fundamental changes addressing mainly financial and administrative considerations rather than taking wider policy goals into consideration as well.

We are of the opinion that agricultural productivity, productivity and competitiveness of the food chain, the support for innovation in one of its most important input industries and the international compatibility of the legal framework constitute these wider policy goals. Food security and sustainable productivity are at the top of the political agenda worldwide, yet they are not mentioned in the Reflection Document.

II. Options for legislative review

As outlined above, ESA is of the opinion that the main consideration is missing from the possible options which is the continued strengthening of innovation and with that productivity, sustainability and competitiveness of Europe's seed sector and its delivery of productivity and competitiveness to European farmers and the total agri-food chain. The options mentioned are mainly looking at the technical questions of (re-)allocation of responsibilities and costs while the policy considerations establish an unqualified linkage between sustainability and biodiversity and an unsubstantiated implication that the professional seeds industry has a negative impact on biodiversity. The options do not refer to the main policy goals of the existing seed marketing legislation.

1. Competitiveness of the European seed sector

A competitive European seed sector is one of the preconditions for increasing the productivity and competitiveness of the European agri-food chain. With many of the other input factors such as available land, more efficient machinery or fertilizers contributing less and less to the economic progress in yield, it is genetic progress and plant breeding technologies that play an increasingly important role for bringing innovation to the food chain. It must also be underlined that this trend is predicted to continue, even to increase in the future, specifically with more and other restrictions on the use of natural resources such as land, water or nitrogen.

2. Competitiveness and productivity of the European farming and agri-food sector

Europe's farming and agri-food sector play an important role not only for the supply of European citizens with affordable and high quality products. On a wide range of agricultural products (including seed!), Europe is also one of the largest exporters and thus plays an important role for the worldwide production of food. Before the background of climate change and with a world population expecting to reach more than 9 billion in 2050, Europe must take its responsibility and continue to contribute to its ability to a competitive and productive farming and agri-food sector.

3. Global compatibility and a functional Internal Market

The European common market for seed as established by the Seed Marketing Directives and the Common Catalogues has allowed breeders to access new markets, provided increasing choice to farmers and growers and has made more biodiversity available to the users of seed than ever before.

But the EU seed industry is also a highly international industry and an increasingly global business. European plant breeders make use of a wide range of breeding stations in all parts of the world to make use of counter-seasonal breeding opportunities, speeding of development cycles and assuring on-time delivery of varieties worldwide. The growing share of breeding material and commercial seed moving internationally is expected to continue to grow.

The global compatibility of the European seed legislation with the OECD seed schemes and its constitutional requirements has been and is a precondition for exploiting the possibilities of the EU's own common rules as well as the opportunities of the worldwide markets. A similar compatibility is required between the International Standards Phytosanitary Measures (ISPM's) developed under the umbrella of the IPPC and EU's Plant Health regulations. Today, Europe plays a leading role in plant breeding, seed production and export of seed; the functioning of the Internal Market and the compatibility of its legislation with international standards and requirements has been precondition for this success.

III. The four scenarios under consideration

ESA is of the opinion that the evaluation as well as the EU seed conference clearly established that scenarios 1 and 4 are not supported by any of the stakeholder groups. ALL stakeholders were of the opinion that the principle policy considerations (see above) are still valid and that the regulatory pillars of the existing legislation (DUS, VCU and seed certification for the crops to which they apply) must be maintained to achieve them.

At the same time, numerous proposals and options for improvements, also specifically related to the governance of the seed sector, were put forward. Here, ESA is of the opinion that the 'Modify' scenario presented by the evaluator must neither be considered exclusively as a proposal for either centralization or deregulation; we are of the opinion that both approaches may be and must be successfully combined in a 'modify' scenario to achieve the best overall outcome of the revision for seed industry, farmers and official bodies.

Therefore, ESA presents its principal appreciation of the table presented in the 'Reflection Document' in a different format as this seems more suitable to outline the principles of the legislation, the findings of the evaluation and the proposed changes.

IV. Pillars of the legal framework for seed marketing

The pillars of the EU's legal framework for seed are established in line with the international standards as laid down by the OECD seed schemes. These pillars partly also concern associated legal frameworks such as e.g. the UPOV Convention. For the EU seed industry, it is imperative that these constitutional pillars remain strong and continue to assure the further successful development of the European industry in its highly competitive international environment.

1. DUS – assured identity

The DUS requirement is enshrined in both OECD and UPOV. It is the base of assuring that farmers and growers have a choice between clearly identifiable varieties with distinct characteristics that are uniformly present in any given bag of (certified) seed of that variety. DUS requirements are thus crucial for an effective and efficient variety listing and protection system.

Specifically before the background of a more and more integrated agri-food chain, assuring the specific identity is not only a value as such; it also is the base for traceability and quality assurance.

ESA recommendations:

- ESA supports the approach of 'one key, several doors', i.e. of a use of DUS tests for both listing and granting of PBRs. Clearly, such an increased importance of the DUS test then requires not only the maintaining but the further improving and harmonizing of the implementation of the DUS testing provisions. This specifically includes the

improvement of the quality of DUS testing according to an agreed quality standard. Here ESA sees an important future role for the CPVO which should be responsible for the assessment and for the accreditation of DUS testing offices in Member States.

- As the expression of morphological characters varies with respect to factors such as day length along with other environmental effects, there are limits to a concentration of test sites. Still, their number can be reduced and testing be rationalised by the use of bilateral or multilateral agreements wherever agroclimatic conditions permit. In this respect reference is made to the CPVO strategic discussion. ESA is of the opinion that depending on the crop a minimum of 2 testing sites, meeting above mentioned quality criteria, is required.
- Generally, strengthening the possibilities for breeders' testing can lead to cost efficiencies; however, not least before the background of the 'one key, several doors' approach and the crucial role of DUS for the attribution of IP rights, ESA considers it imperative that final DUS testing is done under official supervision.

2. VCU – assured performance

In view of the main current and future policy objectives, it is logical and correct for the seed marketing legislation to place a strong emphasis on assuring the performance of new plant varieties. The VCU requirement for the (national) listing of a new plant variety is the expression of the importance that legislator, society, seed industry and farmers attribute to this performance.

ESA is in favour of maintaining the requirements for VCU for the species where they currently apply as this system has demonstrated its effectiveness in the past.

However, ESA is also in favour of strengthening the breeders' involvement in the VCU testing system (e.g. by making use of existing infrastructure, expertise and data) to reduce costs. Similarly, costs may be reduced by avoiding unnecessary duplication of work where conditions are largely similar; respective bilateral as well as multilateral agreements between Member States should be established where this is feasible.

In any case, the official supervision of any future system is considered crucial by the European seed industry to maintain credibility and a level playing field for all companies and users.

A VCU testing of varieties at Community level would be highly difficult and costly to organize given the number of varieties, amount of data and reference varieties to be used when simulating the totality of the EU. Furthermore, such an approach very often would not reflect the reality of the later use(s) of these varieties in the different agroclimatic and phytosanitary conditions, uses and markets.

ESA recommendations:

- Include a general requirement for VCU testing on national level as a prerequisite for national listing and subsequent listing on the EU Common Catalogue for agricultural varieties into a new horizontal EU regulation for seed marketing
- Promote collaboration of Member States for VCU testing with mutual acceptance for national listing.
- Specify the VCU requirements on a crop-by-crop basis in Annexes to the new horizontal regulation. These Annexes should set out technical specifications such as detailed quality requirements (varietal purity and germination levels etc.) and should be managed by a new general Standing Committee on Seeds (combination of existing three Committees on Seed, Plant Health and Plant Variety Rights).

3. Certification – assured quality

Seed certification of agricultural species assures high quality seed and is a precondition for the mutual recognition and acceptance of certified seed in European and international trade.

The compliance with international requirements and the acceptance of international standards such as the OECD seed schemes and UN-ECE are crucial for the practical value and use of EU legislation by the European seed companies. Any possible changes at EU level therefore must maintain the compatibility with these international.

ESA recommendations:

- ESA is of the opinion that the seed certification could be made more efficient and thus cost effective by making use of a certification under official supervision (for more categories of seed) and by dropping standards that are not required in view of international compatibility.
- ESA considers the official supervision of the seed certification to be an important factor for the general acceptance of its results and thus for the free European and international movement of such seed. This has led to the current situation that has placed more varieties and thus more biodiversity than ever at the disposal of Europe's farmers.

4. Specific markets

ESA recognizes the EU's wish to place e.g. sustainability or halting the loss of biodiversity at the core of its general policy considerations. We are of the opinion that the current seed marketing legislation is already a major contributor to agricultural biodiversity as outlined above. The Common Catalogues for agricultural and vegetable varieties list thousands of varieties for all known species and neither farmers nor growers have mentioned limited or insufficient choice as a problem in the evaluation.

In addition, the existing Seed Marketing Directives already provide specific requirements (e.g. labeling of small packets) and recently regulations for marketing of so-called conservation varieties and amateur vegetable varieties have been established.

ESA recommendation:

- ESA considers the existing deregulations as sufficient and does not support establishment of further exceptions for 'niche markets' or 'small producers' as these would endanger the level playing field for breeders and would require costly official supervision to assure enforcement.

5. Governance

As of the start of the evaluation process, ESA has specifically underlined the need for new governance of the seed marketing legislation. This new governance should be based on a cooperation and partnership of public and private sector. We have also shown that such an approach may help to achieve the goals of reduced costs of administration (at the well established high level of quality) for both operators and authorities, that it may contribute to more flexibility and may serve the continuous, forward-looking development of the regulatory requirements for the marketing of seed.

While these ESA comments also contained specific ideas for a wider responsibility for the CPVO for the coordination and quality assurance of the system, they were not limited to this and we therefore take the opportunity to underline the seed sector's request for a more structured and formal role in the management of the future annexes (and respective standards) of the new seed Regulation, together with Commission and Member States.

ESA recommendation:

- Introduction of advisory groups made up of defined stakeholder organisations per Annex (i.e. per species) to should support the Commission in developing proposals for adjusting technical protocols for DUS testing, VCU, technical standards etc..